

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

SEAN DARNELL JEFFRIES,)
)
Petitioner,)
)
v.) 1:19CV656
) 1:11CR127-1
)
UNITED STATES OF AMERICA,)
)
Respondent.)

ORDER

On February 10, 2020, the United States Magistrate Judge's Recommendation was filed and notice was served on Petitioner pursuant to 28 U.S.C. § 636. Petitioner filed objections (Doc. 405) to the Recommendation within the time limit prescribed by Section 636.

The court has reviewed Petitioner's objections *de novo* and finds they do not change the substance of the United States Magistrate Judge's Recommendation (Doc. 403), which is affirmed and adopted.¹

IT IS THEREFORE ORDERED that this action is filed and dismissed *sua sponte* without prejudice to Petitioner promptly filing a

¹ In his objections, Petitioner cites to prior language in Federal Rule of Criminal Procedure 33, but that language was amended in 1998. See Fed. R. Crim. P. 33 Advisory Committee's Notes to 1998 Amendment ("As currently written, the time for filing a motion for new trial on the ground of newly discovered evidence runs from the 'final judgment.' The courts, in interpreting that language, have uniformly concluded that that language refers to the action of the Court of Appeals. . . . [I]t is clear that the present approach of using the appellate court's final judgment as the triggering event can cause great disparity in the amount of time available to a defendant to file timely a motion for new trial. . . . It is the intent of the Committee to remove that element of inconsistency by using the trial court's verdict or finding of guilty as the triggering event..").

corrected motion on the proper § 2255 forms. Finding neither a substantial issue for appeal concerning the denial of a constitutional right affecting the conviction nor a debatable procedural ruling, a certificate of appealability is not issued.

/s/ Thomas D. Schroeder
United States District Judge

March 26, 2020